Damai Jaya Realty Sdn Bhd v Pendaftar Hakmilik Tanah, Selangor

COURT OF APPEAL (PUTRAJAYA) — CIVIL APPEAL NO B-01–384–11 OF 2013
ABDUL WAHAB PATAIL, HAMID SULTAN AND UMI KALTHUM JJCA
20 JANUARY 2015

Land Law — Registration — Estate land — Appeal against decision of High Court in dismissing appeal against decision of Registrar of Land Titles — Failure to register order for sale — Certificate of sale — Whether respondent should have accepted certificate of sale for purpose of registration — National Land Code ss 214A(2) & 302 — Requirement of certificate of approval of Estate Land Board (ELB) for registration — Whether approval obtained

The appellant appealed against the decision of the High Court in dismissing the appellant's appeal pursuant to s 418 of the National Land Code ('NLC') against the decision of the Registrar of Land Titles, Selangor for failure to register an order for sale of the subject property notwithstanding a certificate of sale by court (Form 16F) had been issued and presented. The rejection was purportedly on the grounds that the approval of the estate land board ('ELB') was not obtained. The issue in this case involved estate land. Section 214A of the NLC did not promote the fragmentation of the estate land without the approval of the ELB as ELB comes within the compass of state authority. The appellant has purchased estate land at public auction through the order for sale of a charged property. Under s 214A(11), estate land meant any agricultural land held under one or more title which is more than 40 acres. The issue that arose for the court's determination was whether the respondent should have accepted the certificate of sale pursuant to s 301 of the NLC for purpose of registration when s 214A(2) required a certificate of approval of ELB for registration.

Held, allowing the appeal with costs:

(1) The certificate of sale and/or order for sale had not been set aside by the respondent and/or other relevant bodies. If the respondent and/or relevant authorities were aggrieved by the order of sale and/or certificate of sale, they have a duty and an obligation to make the necessary application to the court to set-aside the order. However, what they could not do was refuse to comply with an order of court (see para 5).

(2) The judgment of the High Court must be set aside and the respondent must directed to register the property as per the order of the court and if

necessary it was the responsibility of the state authority to facilitate registration according to law (see para 10).

(3) The appellant had purchased two charged properties which had gone through a public auction and being the successful bidder had paid a purchase price of RM48.5m and had obtained a 'fiat' of the court to get the purchaser registered as the owner of the property. Section 214A does not permit estate land to be transferred, conveyed or disposed of in any manner (see para 10(a) and (b)).

(4) The property could not be even charged without the consent of the state authority and the fact that it had been charged and the charge registered on the face of record would show that the state authority must have consented and also that the state authority knew the consequence that if the charge conditions are breached the chargee had the right to sell the property to third party. All interested parties relating to state authority knew of the consequence. If objection of the state authority was to be taken in reliance of the endorsement or s 214A, it must have been taken at the earliest opportunity. That was not done in this case (see para 11).

[Bahasa Malaysia summary

Perayu merayu terhadap keputusan Mahkamah Tinggi dalam menolak rayuan perayu berikutan s 418 Kanun Tanah Negara ('KTN') terhadap keputusan Pendaftar Hakmilik Tanah, Selangor kerana gagal untuk mendaftar perintah jualan perkara hartanah meskipun sijil jualan oleh mahkamah (Borang 16F) telah dikeluarkan dan dikemukakan. Penolakan adalah atas alasan bahawa kelulusan daripada lembaga tanah estet ('LTE') belum diperolehi. Isu dalam kes ini melibatkan tanah estet. Seksyen 214A KTN tidak mempromosikan pemecahan tanah estet tanpa kelulusan LTE kerana LTE terangkum di dalam kompas pihak berkuasa negeri. Perayu telah membeli tanah estet semasa di lelongan awam melalui perintah jualan hartanah yang digadaikan. Di bawah s 214A(11), tanah estet bermaksud apa-apa tanah pertanian yang dipegang di bawah satu atau lebih hakmilik yang lebih daripada 40 ekar. Isu yang berbangkit untuk penentuan mahkamah adalah sama ada responden patut menerima sijil jualan berikutan s 301 KTN bagi tujuan pendaftaran apabila s 214A(2) memerlukan sijil kelulusan LTE bagi pendaftaran.

Diputuskan, membenarkan rayuan dengan kos:

(1) Sijil jualan dan/atau perintah jualan tidak diketepikan oleh responden dan/atau badan-badan relevan yang lain. Jika responden dan/atau pihak berkuasa yang lain terkilan dengan perintah jualan dan/atau sijil jualan, mereka mempunyai tugas dan tanggungjawab untuk membuat permohonan yang perlu kepada mahkamah untuk mengetepikan perintah tersebut. Walau bagaimanapun, apa yang mereka tidak dapat

buat adalah menolak untuk mematuhi perintah mahkamah (lihat perenggan 5).

(2) Penghakiman Mahkamah Tinggi mesti diketepikan dan responden mesti diarahkan untuk mendaftar hartanah seperti perintah mahkamah dan jika perlu ia adalah tanggungjawab pihak berkuasa negeri untuk memudahkan pendaftaran mengikut undnag-undang (lihat perenggan 10).

(3) Perayu telah membeli dua hartanah gadaian yang telah melalui lelongan awam dan sebagai pembida yang berjaya telah membayar harga belian sebanyak RM48.5 juta dan telah memperolehi 'fiat' mahkamah untuk mendapatkan pembeli, berdaftar sebagai pemilik hartanah. Seksyen 214A tidak membenarkan tanah estet dipindahkan, dipindah hak atau dijual dalam apa-apa cara (lihat perenggan 10(a) dan (b)).

(4) Hartanah tersebut tidak dapat digadai tanpa izin pihak berkuasa negeri dan fakta bahawa ia telah digadai dan gadaian tersebut telah didaftar atas muka rekod akan menunjukkan bahawa pihak berkuasa negeri mesti memberi keizinan dan juga bahawa pihak berkuasa negeri mesti mengetahui akibat bahawa jika syarat gadaian dimungkiri pemegang gadaian mempunyai hak untuk menjual hartanah kepada pihak ketiga. Pihak-pihak yang berminat berkaitan kepada pihak berkuasa negeri mengetahui tentang akibat tersebut. Jika bantahan pihak berkuasa negeri diambil bergantung kepada sokongan atau s 214A, ia mesti diambil pada peluang terawal. Ini tidak dilakukan dalam kes ini (lihat perenggan 11).]

Cases referred to

Badiaddin bin Mohd Mahidin & Anor v Arab Malaysian Finance Bhd [1998] 1 MLJ 393, FC (refd)

Debnarayan Dutt v Chunilal Ghose [1914] ILR 41 Cal 137, HC (refd)

Hadkinson v Hadkinson [1952] 2 All ER 567, CA (refd)

Kumpulan Sua Betong Sdn Bhd v Ezan Sdn Bhd & Anor [1993] 2 MLJ 289, SC (refd)

Majlis Perbandaran Subang Jaya v Laguna De Bay Sdn Bhd [2015] 2 MLJ 509, CA (refd)

National Union of Bank Employees v Director General of Trade Unions & Anor [2015] 1 MLJ 881; [2014] 6 AMR 143, CA (refd)

Nik Nazmi bin Nik Ahmad v Public Prosecutor [2014] 4 MLJ 157, CA (refd)

Nik Noorhafizi bin Nik Ibrahim & Ors v Public Prosecutor [2013] 6 MLJ 660; [2014] 2 CLJ 273, CA (refd)

Pengarah Tanah dan Galian, Wilayah Persekutuan v Sri Lempah Enterprise Sdn Bhd [1979] 1 MLJ 135, FC (folld)

R v Poplar Borough Council, ex parte London County Council (No 2); R v Same, ex parte Managers of Metropolitan Asylums Board (No 2) [1922] 1 KB 95, CA (refd)

Legislation referred to

National Land Code ss 5, 214A, 214A(1), (2), (3), (4), (9), (11) 267, 269, 269(2), 270, 271, 272, 273, 274, 275, 276, 277, 278, 279, 280, 281, 282, 283, 284, 285, 286, 287, 288, 289, 290, 291, 292, 293, 294, 295, 296, 297, 298, 299, 300, 301 418, Form 16F

Appeal from: Originating Summons No 24–768–05 of 2013 (High Court, Shah Alam)

Norizawati bt Md Noor (Lee Fook Leong & Co) for the appellant.
Mohamad Mustaffa bin P Kunyalam (Assistant Legal Officer, Selangor Legal State Offices) for the respondent.

Hamid Sultan JCA (delivering judgment of the court):

[1] The appellant appeals against the decision of learned High Court judge who dismissed the appellant's appeal pursuant to s 418 of the National Land Code ('NLC') against the decision of the Registrar of Land Titles, Selangor for failure to register an order for sale of the subject property notwithstanding a certificate of sale by court (Form 16F) had been issued and presented; the rejection purportedly on the grounds that the approval of the estate land board ('ELB') was not obtained came up for hearing on 20 October 2014 and we reserved judgement. In my view, one important issue fundamental to the rule of law and the Federal Constitution in relation to order of court and its compliance has arisen in the instant case and needs to be deliberated (see *Badiaddin bin Mohd Mahidin & Anor v Arab Malaysian Finance Bhd* [1998] 1 MLJ 393). This is my judgment allowing the appeal. My learned brother Abdul Wahab bin Patail JCA has written a separate judgment also allowing the appeal.

PRELIMINARY AND JURISPRUDENCE

[2] The issue here involves estate land. Section 214A of the NLC does not promote the fragmentation of the estate land without the approval of the ELB. ELB comes within the compass of state authority. The appellant has purchased estate land at public auction through the order for sale of a charged property. Under s 214A(11), estate land means any agricultural land held under one or more title which is more than 40 acres. It is not in dispute that the land in question is about 40.3 acres and it is an estate land. What was in issue before the High Court was whether the respondent should have accepted the certificate of sale pursuant to s 301 of the NLC for purpose of registration when s 214A(2) requires a certificate of approval of ELB for registration. What was not considered by the court was the principle laid down by the Federal Court that all orders of court must be obeyed by the relevant parties (unless the order is set aside), a principle which is much entrenched in our jurisprudence (see *Hadkinson v Hadkinson* [1952] 2 All ER 567). It is also well settled the motive

for disobedience is irrelevant (*R v Poplar Borough Council, ex parte London County Council (No 2); R v Same, ex parte Managers of Metropolitan Asylums Board (No 2)* [1922] 1 KB 95). The failure to act and decide as enunciated by the Federal Court on the face of record is bad under the Federal Constitution, as it compromises the authority and jurisdiction of the court and paves way and also stands as a precedent for relevant parties to breach an order of court. The consequence of breach of order of court is a serious matter and amounts to contempt and the Federal Constitution preserves the power of the Superior Court to punish for contempt under art 126 to ensure order of courts are complied by all, inclusive of all constitutional functionaries and its agencies, etc (see *Nik Noorhafizi bin Nik Ibrahim & Ors v Public Prosecutor* [2013] 6 MLJ 660; [2014] 2 CLJ 273; *Nik Nazmi bin Nik Ahmad v Public Prosecutor* [2014] 4 MLJ 157).

[3] The memorandum of appeal (*tambahan*) reads as follows:

(1) Yang Arif Hakim tersilap dari segi undang-udang dan dari segi fakta dengan gagal mengambil kira bahawa Seksyen 214A Kanun Tanah Negara 1965 (KTN) hanya terpakai terhadap pemilik tanah dan pembeli dan tidak terpakai ke atas pemegang gadaian dan pembeli yang membeli melalui penjualan lelong awam.

(2) Yang Arif Hakim tersilap dari segi undang-undang dan dari segi fakta dengan gagal mengambil kira Borang 14D KTN yang memerlukan tandatangan penerima pindahmilik/pembeli dan tandatanga ''tuanpunya'.

(3) Yang Arif Hakim tersilap dari segi undang-undang dan dari segi fakta dengan gagal mengambil kira Borang 14D KTN yang tidak memperuntukan 'Pemegang Gadaian' boleh menandatangani Borang 14D KTN.

(4) Yang Arif Hakim tersilap dari segi undang-undang dan dari segi fakta dengan gagal mengambil kira bahawa hak dan kuasa mutlak pemegang gadaian untuk menjual tanah lading yang digadai kepadanya mengikut Seksyen 253 KTN sekiranya berlaku apa-apa pelanggaran oleh pemilik tanah lading tidak boleh dihalang oleh Seksyen 214A KTN.

(5) Yang Arif Hakim tersilap dari segi undang-undang dan dari segi fakta dengan gagal mengaplikasikan tujuan sebenar pihak perundangan menggubal Seksyen 214A KTN yang hanya terpakai untuk urusan pindahmilik yang dilakukan oleh tuan punya dengan pembeli secara sukarela dan bukan untuk penjualan lelong awam sedangkan Yang Arif Hakim bersetuju di perenggan 27 Alasan Penghakimannya tentang tujuan asal penggubalan Seksyen 214A KTN.

(6) Yang Arif Hakim tersilap dari segi undang-undang dan dari segi fakta dengan memutuskan bahawa Borang 16F perlu disertakan dengan kelulusan daripada Lembaga Tanah Ladang semasa pendaftaran Perintah Jualan yang dikeluarkan oleh Mahkamah Tinggi Shah Alam.

(7) Yang Arif Hakim tersilap dari segi undang-undang dan dari segi fakta dengan memutuskan bahawa tanpa kelulusan daripada Lembaga Tanah Ladang, pendaftaran Borang 16F adalah bertentangan dengan kehendak Seksyen 214A KTN.

(8) Yang Arif Hakim tersilap dari segi undang-undang dan dari segi fakta dalam mengambil kira pertimbangan yang tidak relevan (irrelevant consideration) dan dalam kegagalan untuk memberi perhatian terhadap pertimbangan yang relevan (relevant consideration).

[4] The conclusion of the learned judge reads as follows:

34. A Form 16 certificate of sale by court is an instrument of dealing issued to a purchaser of land at a public auction pursuant to an order for sale. The registration of a Form 16F is subject to Part Eighteen NLC. As an estate land the alienation of Lot 10560 is subject to the approval of the estate land board being obtained for the transfer under s 214A of the NLC.

35. The s 214A requirement is not a condition or restriction imposed by the state authority; it is therefore not a restriction in interest. Instead, it is a prohibition or limitation imposed by the NLC. As such and by virtue of s 301(c) of the NLC, the exemption under the last paragraph of s 301 of the NLC relating to the requirement to obtain the consent of the state authority does not apply to the Form 16F in question.

36. In consequence, the Form 16F is not an instrument which is fit for registration because it has no complied with the conditions contained sub-para (ii) of condition (b) and condition (c) of s 301 of the NLC. Accordingly, the respondent was correct in rejecting the registration of Form 16F. For the foregoing reasons, the appeal was dismissed with costs.

BADIADDIN'S CASE

[5] In the instant case, the certificate of sale and/or order for sale has not been set aside by the respondent and/or other relevant bodies. If the respondent and/or relevant authorities are aggrieved by the order of sale and/or certificate of sale, they have a duty and an obligation to make the necessary application to the court to set aside the order. However, what they cannot do is refuse to comply with an order of court. In *Badiaddin bin Mohd Mahidin & Anor v Arab Malaysian Finance Bhd* [1998] 1 MLJ 393, the Federal Court observed:

> It is well settled that even courts of unlimited jurisdiction have no authority to act in contravention of written law. Of course, so long as an order of a court of unlimited jurisdiction stands, irregular though it may be, it must be respected. But where an order of such a court is made in breach of statute, it is made without jurisdiction and may therefore be declared void and set aside in proceedings brought for that purpose. It is then entirely open to the court, upon the illegality being clearly shown, to grant a declaration to the effect that the order is invalid and to have it set aside.

JURISPRUDENCE RELATING TO SECTION 214A

[6] Section 214A of the NLC states as follows:

214A Control of transfer of estate land.

(1) Notwithstanding anything contained in this Act, no estate land is capable of being transferred, conveyed or disposed of in any manner whatsoever unless approval of such transfer, conveyance or disposal has first been obtained from the Estate Land Board (hereinafter referred to as 'the Board') established under sub-section (3). [Am. Act A1104 — Prior text read — '(1) Notwithstanding anything contained in this Act, no estate land is capable of being transferred, conveyed or disposed of in any manner whatsoever, to two or more persons unless approval of such transfer, conveyance or disposal has first been obtained from the Estate Land Board (hereinafter referred to as 'the Board') established under sub-section (3).']

(2) The Registrar shall not register any instrument of transfer of such land under Part Eighteen of this Act unless such instrument is accompanied by a certificate of approval granted by the Board.

(3) For the purpose of this section there shall be established an Estate Land Board consisting of — (a) the State Secretary, who shall be the Chairman; [Am. Act A1104 — Prior text read — '(a) the State Secretary, who shall be the Chairman; and'] (aa) the State Director, who shall be the Secretary; and [Ins. Act A1104] (b) not more than four members appointed by the State Authority from amongst members of the Public Service.

(4) The proprietor or any co-proprietor of any estate land desiring to transfer, convey or dispose of in any manner whatsoever such land shall, together with the person or persons to whom the land is to be transferred, conveyed or disposed of, jointly submit an application to the Secretary of the Board in Form 14D. [Am. Act A1104 — Prior text read — '(4) The proprietor or any co-proprietor of any estate land desiring to transfer, convey or dispose of in any manner whatsoever such land to two or more persons shall together with such persons jointly submit an application to the Board in Form 14D.']

(5) The Board may approve an application made under sub-section (4) and shall have power to refuse or cancel an approval of any such application if —

(a) it is satisfied that any statement or representation made in the application is false or incorrect; or

(b) it is satisfied that the applicant fails or refuses to comply with any direction given or restrictions or conditions imposed by it; or

(c) it appears to it that the approval of the application will not be in the public interest.

(6) Decision of the Board shall be by majority of votes; and in the case of equality of votes the Chairman shall have a casting vote.

(7) Before making any decision the Board may as it thinks fit call any person to give any statement before it or produce any document to be examined by it.

(7A) The decision of the Board shall be conveyed by the Secretary of the Board to the applicants referred to in sub-section (4) as expeditiously as possible. [Ins. Act A1104]

(8) Where approval of an application under sub-section (4) is refused or cancelled by the Board, the applicant may, within 30 days after the communication to him of the Board's decision of such refusal or cancellation appeal in writing to the State Authority.

(9) The State Authority may confirm or reverse the decision of the Board: Provided that where the decision of the Board is reversed by the State Authority, the State Authority may give such direction or impose, such restriction or condition as it may think fit.

(10) Any person who obtains or attempts to obtain approval of the Board by knowingly making or producing or causing to be made or produced any false or fraudulent declaration, certificate, application or representation, whether in writing or otherwise or who fails or refuses to comply with any direction, restriction or condition imposed on him shall be guilty of an offence and shall on conviction be liable to a fine not exceeding RM10,000 and where the offence is a continuing one shall be further liable to a fine of not exceeding RM1,000 in respect of each day the offence is committed.

(10A) (a) Any person who transfers, conveys or disposes of or attempts to transfer, convey or dispose of in any manner whatsoever, any estate land in contravention of sub-section (1), shall be guilty of an offence and shall on conviction be liable to imprisonment for a term of not less than one year and not more than three years and to a fine not exceeding ten thousand ringgit. (b) For the purposes of this section, the execution of an agreement to convey or dispose of the whole of an estate to two or more persons, or to convey or dispose of any portion or portions of an estate land to one or more persons, without the approval of the Board, shall be conclusive proof that the estate land is conveyed or disposed of in contravention of sub-section (1); and any act to demarcate an estate land or to cause or permit the demarcation of estate land is conveyed or disposed of in contravention of sub-section (1); shall be prima facie proof that the person so acting, causing or permitting attempts to transfer, convey or dispose of the estate land in contravention of sub-section (1). [Am. Act A1104 — Prior text read — '(b) For the purposes of this sub-section, the execution of an agreement to convey or dispose of the whole of an estate to two or more persons, or to convey or dispose of any portion or portions of an estate land to one or more persons, without the approval of the Board, shall be conclusive proof that the estate land is conveyed or disposed of in contravention of sub-section (1); and any act to demarcate an estate land or to cause or permit the demarcation of estate land is conveyed or disposed of in contravention of sub-section (1); shall be prima facie proof that the person so acting, causing or permitting attempts to transfer, convey or dispose of the estate land in contravention of sub-s ection (1).']

(11) For the purpose of this Act 'estate land' means any agricultural land held under one or more than one title the area or the aggregate area of which is not less than 40 hectares and the alienated lands constituting such area are contiguous. [Am. Act A1104 - Prior text read - '(11) For the purpose of this section 'estate land' means any

agricultural land held under one or more than one title the area or the aggregate area of which is not less than 40 hectares and the lots constituting such area are contiguous.']

(12) For the purpose of this Act, alienated lands held under final title or qualified title or a combination thereof, shall be taken to be contiguous notwithstanding that they are separated from each other only by such land as is used, required or reserved for roads, railways or waterways. [Subs. Act A1104 - Prior text read — '(12) For the purpose of this section, the said lots shall be taken to be contiguous if they are separated from each other only by such land as is used, required or reserved for roads, railways or waterways.']

[7] The jurisprudence relating to s 214A is set out in *Janab's Key To Practical Conveyancing, Land Law and Islamic Banking*, (2nd Ed), (2003) and reads as follows:

This section deals with control of transfer of estate land. Estate land under the section has a special meaning. It refers to agricultural land held under one or more than one title the area or the aggregate area of which is not less than 40 hectares and the lots constituting such area are contiguous.

The effect of this section is that it prevents estate land to be fragmented. Section 214A of the Code was considered by the Federal Court in *Bertam Consolidated Rubber Co Ltd v Collector of Land Revenue Province Wellesley* [1984] 1 MLJ 165. Mohamed Azmi FJ was of the view that section 214A has the effect of prohibiting any transfer, conveyancing or disposal in any manner of estate land unless approval is obtained first from the Estate Land Board. His Lordship stated that the object of the section is to prevent fragmentation of estate land, without due consideration being given to social and economic consequences to the country. [See *Rengamah a/p Rengasamy v Tai Yoke Lai & Anor* [1998] 5 MLJ 260].

In *Grico Estate Sdn Bhd & Anor v The Registrar of Titles, Kedah* [1980] 2 MLJ 293, Syed Agil Barakbah SCJ relying on the case of *Spiller Ltd v Cardiff* [1931] 2 KB 2 was of the view that the word 'contiguous' in section 214A must be construed in its ordinary and proper sense as meaning 'touching' and not in its loose sense as meaning 'neighbouring'. His Lordship stated that the object of section 214A of the Code is to prevent fragmentation of estate land and Parliament has introduced certain conditions and restrictions as embodied in the section so that any application for the transfer of estate land requires more stringent enquiry than in cases of ordinary transfer.

In *Kumpulan Sua Betong Sdn Bhd v Ezan Sdn Bhd & Anor* [1993] 2 MLJ 289, the Supreme Court considered whether there was a need to obtain the approval of the Estate Land Board for the sale of a portion of the Estate Land. The court held that under section 214A(4) of the Code the application is required only when the transfer, conveyancing or disposal in any manner whatsoever of the estate land is made to two or more persons. Where the estate land or only a portion of it is to be transferred to one person, the Estate Land Boards approval is not required. ...

Amendment Act 2001:

Section 214A of the Code relates to 'control of transfer of estate land'. This amendment permits the legal owner of the estate land together with the purchaser of the land to jointly submit an application of the transfer in form 14b.

[8] It must be noted that case of *Sua Betong* which says that transfer to one person is not caught by s 214A is no more applicable due to the amendment to Act 214A(1). In addition, s 214A and the forms to obtain consent from ELB relate only to the owner of the lease land and the intending purchaser of the estate land (see s 214A(4)). This section does not cater for foreclosure proceedings based on a charge, etc; s 269 of the NLC gives protection to a purchaser of property in foreclosure proceedings and exempts the consent provision attached to the transfer, etc as set out in the s 269(2) of the NLC. The said s 269 of the NLC reads as follows:

269 Protection of purchasers.

(1) The receipt in writing of any officer of the Court or Land Administrator or in the case of a financial institution, chargee to whom any purchase money is paid on a sale under this Chapter shall be a sufficient discharge therefore to the purchaser; and the purchaser shall not be concerned to see to the application thereof, and shall not be liable for any loss occasioned by any failure to apply it in accordance with the provisions of section 268 or 268A, as the case may be. [Am. Act A1104 — Prior text read — '(1) The receipt in writing of any officer of the Court or Land Administrator to whom any purchase money is paid on a sale under this Chapter shall be a sufficient discharge therefore to the purchaser; and the purchaser shall not be concerned to see to the application thereof, and shall not be liable for any loss occasioned by any failure to apply it in accordance with the provisions of section 268.']

(2) The sale of any lease under this Chapter shall not constitute a breach of any provision thereof, express or implied, restricting the right of the lessee to transfer the lease or otherwise part with the possession of the demised property.

(3) Notwithstanding anything contained in this Act or any other written law, the State Authority, any local authority, any chargor or purchaser who suffers any loss or damage by reason of any act, omission,neglect, error or default arising under this Chapter shall be entitled to such compensation as may be determined by the Court.

[9] The Federal Court case of *Pengarah Tanah dan Galian, Wilayah Persekutuan v Sri Lempah Enterprise Sdn Bhd* [1979] 1 MLJ 135, will be useful starting point to deal with the issues and necessary orders or directions which need to be given in the instant case. The facts of the Federal Court case read as follows:

In this case the applicant company was the registered proprietor of a piece of land held in perpetuity. The land was in the Federal Territory and the applicant applied to the Federal Government for subdivision of the land and for conversion to have the express condition relating to the user of the land amended to allow the applicant to put up a hotel for which planning permission had been granted. It also applied to surrender part of the land to government for use as service roads, side and back

lanes. The matter was referred to the land executive committee and subsequently the Director of Lands and Mines, Federal Territory, informed the applicant that the application would be approved if certain conditions were complied with. The applicant agreed to all of them except one which was that on surrendering the land, the applicant was to receive back in respect of the part to be retained by him not title in perpetuity but a lease of 99 years. The applicant applied to the court for an order that the approving authority approve its application for subdivision upon the usual terms and conditions. In the High Court Harun J gave judgment for the applicant. The land executive committee thereupon appealed to the Federal Court.

And the Federal Court held:

(1) the government had no power to make the applicant give up its freehold title and receive in exchange a 99 year lease. The condition which the applicant objected to did not relate to the permitted development, it was unreasonable and was used for an ulterior object, the object being to bring developed land into line with newly alienated land as to which only leases not titles in perpetuity are granted;

(2) the applications should be remitted for reconsideration by the land executive committee on behalf of the Federal Government in the light of the law set out in the judgment of the court;

(3) in reconsidering the applications the land executive committee should act fairly and not arbitrarily and should bear in mind that it had already approved the application subject to the other conditions set out therein.

[10] I have read the appeal record and the submissions of the parties in detail. I take the view that the judgement of the High Court must be set aside and direct the respondent to register the property as per the order of court and if necessary it is the responsibility of the state authority to facilitate registration according to law. Our reasons, inter alia, are as follows:

(a) in the instant case, the appellant has purchased two charged property which has gone through a public auction and being the successful bidder had paid a purchase price of RM48.5m and had obtained a 'fiat' of the court to get the purchaser registered as the owner of the property; and

(b) s 214A does not permit estate land to be transferred, conveyed or disposed off in any manner. What is also not in dispute in the instant case, is the title to one of the lots is endorsed with a restriction on the following terms:

> Tanah yang diberi milik ini tidak boleh dipindah milik, dipajak atau digadai melainkan dengan kebenaran Pihak Berkuasa Negeri.

[11] It will follow the property cannot be even charged without the consent of the state authority and the fact that it had been charged and the charge registered on the face of record will show that the state authority must have

consented and also that the state authority knew the consequence that if the charge conditions are breached the chargee has the right to sell the property to third party. In essence, all interested parties relating to state authority knew of the consequence. If objection of the state authority is to be taken in reliance of the endorsement or s 214A, it must have been taken at the earliest opportunity. That was not done in this case.

[12] Section 5 of the NLC defines the state authority which means the Ruler or Governor of the State, and it will follow the State Government of Selangor and all its agencies will fall within its compass of control, subject to the Federal Constitution, Federal Laws and State Laws. (See *Majlis Perbandaran Subang Jaya v Laguna De Bay Sdn Bhd* [2015] 2 MLJ 509). Section 214A(3) provides for the formation ELB which is controlled by the state authority through its state secretary, state director and four members appointed by the state authority from amongst the members of the public service. The state authority under s 214A(9) has ample power to control the decision of the ELB.

[13] In the instant case, s 301 says 'when an instrument is fit for registration'. It also says that once the certificate of sale has been given consent by state authority relating to restriction in interest to such land will not be applicable. Section 214A has been placed in Part Fourteen of the NLC and has nexus to s 292 when it relates to registration. Part Nine also fortifies the role of the state authority in relation to subdivision, partition and amalgamation which has some nexus to the generic word fragmentation. The learned trial judge's proposition that the restriction of interest does not relate to s 214A without considering Part Nine (subdivision, partition of amalgamation) may not be totally correct taking into consideration ss 267 and 269 of the NLC which guarantees the registration of the property once the certificate of sale is issued and also other provisions of Part Eighteen of NLC which imposes a duty on the respondent to facilitate registration. The definition of restriction in s 5 of the NLC reads as follows:

> 'Restriction in interest'
>
> 'interest' in relation to land means any interest in land recognised as such by law, and includes an estate in land.

Section 292 of the NLC reads as follows:

> *PART EIGHTEEN* (Emphasis added.)
>
> REGISTRATION OF DEALINGS CHAPTER 1 PRESENTATION OF INSTRUMENTS FOR REGISTRATION
>
> 292 Instruments capable of being registered, and method of presentation therefore.
>
> (1) The following instruments may be registered under this Part, and may be presented to the Registrar for that purpose in accordance with the provisions of sub-section (2) —

(a) *any transfer under Part Fourteen of land, of an undivided share in land, or of any lease, sub-lease or charge*; (Emphasis added.)

(b) any lease, sub-lease or surrender thereof under Part Fifteen;

(c) any charge, discharge or instrument of postponement under Part Sixteen:

(d) any certificate of sale under Part Sixteen; and

(e) any instrument granting or releasing any easement under Part Seventeen.

(2) Any such instrument may be so presented either by lodging it at the Registry or, as the case may be, Land Office, or by despatching it to the Registrar by pre-paid post; and the time of presentation shall, in the case of any instrument presented by post, be taken as the time at which it is withdrawn from its cover in the Registry or Land Office. (3) The Registrar shall note the time of presentation on any such instrument forthwith. (4) The death of any person by or on behalf of whom any instrument of dealing has been executed shall not affect the validity thereof, and any such instrument may, accordingly, be presented for registration under this Part as if the death had not occurred.

And s 267 of the NLC reads as follows:

267 Effects of sale. (1) Any certificate of sale given to a purchaser under sub-section (3) of section 259 or sub-section (4) of section 265 in respect of any charged land or lease shall be treated for all the purposes of this Act as an instrument of dealing, and shall be *registrable accordingly under Part Eighteen; and, upon the registration thereof* — (Emphasis added.)

(a) the title or interest of the chargor shall pass to and vest in the purchaser, freed and discharged from all liability under the charge in question and any charge subsequent thereto; and

(b) subject to paragraph (a), and sub-section (2), the relevant provisions of Part Fourteen shall apply as if the chargor had transferred the land or lease to the purchaser in accordance with the provisions of that Part.

(2) Notwithstanding that it was granted with the consent in writing of the chargee, as required by sub-section (1) of section 226, no tenancy exempt from registration granted by the chargor after the date of registration of the charge shall be binding on the purchaser unless, prior to the date of registration of the certificate of sale, the tenancy had become protected by an endorsement on the register document of title to the land pursuant to Chapter 7 of Part Eighteen.

(3) The provisions of sub-section (2) shall have effect in addition to those of sub-section (3) of section 213, under which, by virtue of the fact that he claims through the chargee, the purchaser will not be bound by any tenancy granted by the chargor before the date of registration of the charge unless it had become protected by endorsement prior to that date.

[14] State authority under the definition means the Ruler, and it is trite that consent on land matter as in the instant case is not obtained from the Ruler but by the state government and its agencies. In the instant case, the state authority fully knew or ought to have known from the date the consent to charge was

allowed and/or registered the consequence of the breach by the chargor(s) if the repayment under the charge is not made. It will be abhorrent to notion of justice and fair play for the state authority and/or its agency to refuse registration. A responsible state authority should help to facilitate registration, and where necessary provide the certificate of ELB as of right on the facts of the instant case. Nothing in the case was done in secret to defeat the law. Technical objection of such nature should not be allowed to prevail in view of ss 292, 267 of the NLC as well as ss 297, 269–300 in particular s 299 of the NLC.

[15] Part Eighteen deals with registration of dealings as it has 26 sections. It attempts to give protection to the public from administrative abuse as in the instant case. It is the duty of the registrar to facilitate registration. Sections 297–300 impose a duty on the registrar to do so. This was not adhered to in the instant case.

[16] In the instant case the learned trial judge had made much effort to literally interpret s 214A as well as s 301. Literal interpretation of a statute is always subject to rule of law. The hallmark of interpretation and judgment writing in civil cases requires the court to consider justice, equity and good conscience in any decision making process which jurisprudence has been incorporated into our jurisprudence by case laws (see *Debnarayan Dutt v Chunilal Ghose* [1914] ILR 41 Cal 137). Literal interpretation of s 214A as well as s 301, without balancing other provisions of NLC or Acts, case laws, Federal Constitution, etc as well as the common sense approach relating to justice, equity and good conscience will result in a perverse judgment. For example, in the instant case, a purchaser who had paid about RM48.5m and who had been guaranteed good title for registration under NLC has been prevented by the respondent from registering the property. Justice, equity and good conscience must be a starting and ending point to be considered in all decision making process and it is always subject to rule of law, and where the law is silent, the courts are obliged to deliver judgment according to justice, equity and good conscience, and at all times act within the framework of the rule of law and the Federal Constitution to preserve the integrity of the decision making process. In *National Union of Bank Employees v Director General of Trade Unions & Anor* [2015] 1 MLJ 881; [2014] 6 AMR 143, the coram of Court of Appeal consisting of Abdul Wahab bin Patail, Linton Albert and Hamid Sultan bin Abu Backer in the interpretation of statute and the application of rule of law and Federal Constitution, had this to say:

> Rule of law in judicial decision making process necessarily means the court must give utmost consideration to the Federal Constitution and when interpreting a statute must not forget that (i) law under the Federal Constitution means substantive law and procedure; (ii) literal rule per se is not the only tool to interpret statutes; and other provision of the law and tools have to be taken into consideration for example s 17A of the Interpretation Acts 1948 and 1967; ...

[17] Notwithstanding the comprehensive and speaking judgment of the learned trial judge (who did not have the benefit of decided cases in this area of jurisprudence), I am of the considered view that this is a fit and proper case to allow the appeal and direct the registration of the said property within 60 working days from the date of this order with a direction that the respondent and/or the state authority and/or agencies facilitate the registration according to law.

[18] For reasons stated above, I will allow the appeal. The judgment of the High Court is set aside, with costs here and below.

[19] I hereby ordered so.

Appeal allowed with costs.

Reported by Afiq Mohamad Noor